

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE BASU GROUP, INC.,

Plaintiff,

- against -

SEVENTH AVENUE, INC.,

Defendant.

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DOC #: _____
DATE FILED: 3/31/18

ORDER

16 Civ. 461 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

This is a copyright infringement action concerning a peacock feather design.

Pending before the Court are the parties' cross-motions for summary judgment. (Dkt. Nos. 65, 72)

The Court finds that material issues of fact exist as to the validity of the copyright for Peacock Feather #1 – specifically, whether the date of first publication listed in the application submitted to the Copyright Office – January 1, 2008 – is accurate. As Defendant Seventh Avenue has submitted evidence that this information is inaccurate, and that Plaintiff knew it was inaccurate at the time the information was supplied to the Copyright Office, this Court is required under 17 U.S.C. § 411(b)(2) to “request the Register of Copyrights to advise the court whether the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration.” See 17 U.S.C. § 411(b)(2). Accordingly, this Court cannot rule as a matter of law that Plaintiff's copyright is valid, and Plaintiffs' motion for summary judgment is denied.

Defendant's cross-motion for summary judgment is also denied. Although material issues of fact exist as to the date of first publication, the Court concludes that Peacock

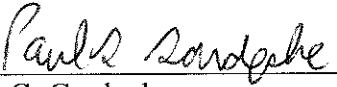
Feather #1 is not a derivative work, and Defendants' motion for copyright invalidity on that basis is denied. Moreover, there are material issues of fact as to copyright infringement and Defendants' defenses of fraud on the Copyright Office and unclean hands.

The Clerk of Court is directed to terminate the motions. (Dkt. Nos. 65, 72)

It is further ORDERED that there shall be a conference in this matter on **April 19, 2018, at 11:15 a.m.** in Courtroom 705 of the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York.

Dated: New York, New York
March 31, 2018

SO ORDERED.



Paul G. Gardephe
United States District Judge